

FAQ: KRS 158.148 Bullying Definition

This document is intended to provide schools and districts guidance with regard to [KRS 158.148](#), which created a formal definition for bullying.

(1) What is the definition of bullying?

Pursuant to [158.148](#) (1), bullying is defined as:

(1) Any unwanted verbal, physical, or social behavior among students that involves a real or perceived power imbalance and is repeated or has the potential to be repeated:

1. that occurs on school premises, on school-sponsored transportation, or at a school-sponsored event; or
2. that disrupts the education process.

Additionally, this definition shall not be interpreted to prohibit civil exchange of opinions or debate or cultural practices protected under the state or federal Constitution where the opinion expressed does not otherwise materially or substantially disrupt the education process.

(2) What are the statutory responsibilities of the schools and districts?

[KRS 158.148](#) requires the adoption of a code of acceptable behavior and conduct by the local board of education. This code must prohibit bullying, contain the type of behavior expected from each student, the consequences of failure to obey the standards, and establish the importance of the standards to the maintenance of a safe learning environment where orderly learning is possible and encouraged. Additionally, the code shall contain procedures for identifying, documenting, reporting, investigating, and responding to a complaint or report of bullying. The code must include information regarding the consequences for bullying. Schools must post the code adopted by their local board and provide copies to all school employees, parents, legal guardians/custodians, etc.

The superintendent is responsible for overall implementation and supervision of the code and the principal is responsible for administration and implementation within each school. The principal of each school is charged with applying the code uniformly and fairly to each student.

Schools and districts should begin every process within their response to bullying by addressing their relevant policies.

(3) When do you begin an investigation for bullying?

Every report of bullying from students, parents, guardians, staff, or other individuals should be investigated by school personnel. Bullying can happen to anyone at any time, so it is important for all incidents to be investigated, regardless of the frequency of reports or the identity of the students supposedly involved in the bullying.

(4) What does “real or perceived power imbalance” mean?

According to Dr. Dan Olweusⁱ, who created the internationally-recognized Olweus Bullying Prevention Program, bullying happens to someone who “has difficulty defending himself or herself.” The person may have difficulty defending himself/herself verbally, physically, or socially for various reasons.

The following scenario is not all-inclusive of what “real or perceived power imbalance” means, but it may help to provide an example of what this could look like in school. For weeks now, Marsha has been telling her friends not to let Tia sit with them at lunch. She also has posted mean things about Tia on social media, which all of the friend group have seen. Tia has been avoiding her family at home, and her grades have dropped. Both girls are the same age, approximately the same height and weight, and have historically been friends. However, because Marsha has begun repeatedly excluding Tia and verbally abusing her on social media, Tia does not feel comfortable standing up for herself due to the risk of further bullying and embarrassment. While it can be difficult to see, a perceived power imbalance like that between Marsha and Tia can be very powerful and devastating.

(5) What does “potential to be repeated” mean?

Webster’s dictionary defines “potential” as “capable of becoming real.” It defines “repeated” as “said, done, or happening again and again.” The plain meaning of this phrase would then be that bullying can be capable of happening again and again.

Again, the following scenario is not all-inclusive of what the “potential to be repeated” means, but it is intended to help explain how this would be exhibited in school. Charlie is the “ringleader” of a group of boys who have been bullying Nadia for being tall and skinny. When Lionel moves into the school in October, Charlie laughs at him and calls him names for being tall and skinny in front of the entire class. Even though this is just one instance of Charlie picking on Lionel, because he was previously bullying Nadia, there is a potential for this bullying behavior to be repeated on Lionel. Charlie picking on Lionel just one time would be considered bullying.

(6) What does “disrupts the education process” mean?

KSBA Model Policy 09.426 says that schools should review applicable local board policies to determine whether this term is defined. Generally, however, behavior which disrupts the educational process includes, but is not limited to:

1. Conduct which threatens the health, safety, or welfare of others;
2. Conduct which may damage public or private property, including the property of students or staff;
3. Illegal activity;
4. Conduct that materially or substantially interferes with another student’s access to educational opportunities or programs, including the ability to attend, participate in and benefit from instructional and extracurricular activities; or

5. Conduct that materially or substantially disrupts the delivery of instructional services or interferes with the orderly administration of the school and school-related activities or district operations.

(7) What is the difference between bullying and peer conflict?

As previously noted in the bullying definition, bullying is repeated, intended to cause harm, and involves a power imbalance. A peer conflict does not include all of these three criteria. Typically, a peer conflict does not involve a power imbalance. For example, John and Benjamin get in a fist fight over a girl for the third time this school year. The fights have been repeated, and both boys have been aggressive in their actions. However, both are also approximately the same size, equally popular, and are in the same class. Therefore, there is no power imbalance. This is a peer conflict and does not need to be treated as bullying.

(8) How do we know when to report bullying in Infinite Campus?

Once an administrator or other school personnel has determined after an investigation that an incident is bullying, all bullying and harassment behavior events must be recorded in Infinite Campus, regardless of resolution. Please reference the [Safe Schools Data Standards](#) for more information.

(9) What is covered under [KRS 158.148](#)(1)(b) where it indicates that the above definition “shall not be interpreted to prohibit civil exchange of opinions or debate or cultural practices protected under the state or federal Constitution where the opinion expressed does not otherwise materially or substantially disrupt the education process”?

Students in public schools frequently engage in conduct of an expressive nature, including discussion and debate regarding various personal opinions and beliefs. For example, students may engage in debate regarding religious or political views. Such conduct, absent disruption to the education process (see above), is NOT bullying as set forth in [KRS 158.148](#), even if one student seems to dominate the conversation. In fact, such conduct may be protected by students’ first amendment rights to free speech. However, if student conduct of an expressive nature that is unwanted AND upsets the education process AND involves a real or perceived power imbalance AND is repeated or has the potential to be repeated, it meets the definition of bullying.

This following scenario is not all-inclusive of the “civil exchange” between students, but it can serve as an example of what may occur in schools when a civil exchange can turn into bullying. In Ms. Patterson’s political studies class, several of her students began a discussion about the spread of a different religion in Latin America in the 1700s. Mike and Loretta in particular differed heatedly over the subject, as Mike believed that it was fine for the religion to be spread to the native peoples. Loretta stated that she believed the spread of the religion negatively affected the native people’s culture. While the discussion was heated and repeated over several days, it was not bullying, as the education process was not interrupted and did not involve a power imbalance. However, Mike began bringing up the discussion at lunch after their class for several weeks and calling Loretta derogatory names for believing that his religion should not have been spread. Several other students began to pick on Loretta for not following the dominant religion. Loretta chooses to withdraw from any discussion in Ms. Patterson’s class, as she now feels uncomfortable

sharing her opinions. She also experiences feelings of anxiety whenever it is time for the political science class. Mike and his like-minded friends now dominate the discussion in class. This has now become bullying, as it is repeated, aggressive, and involves a power imbalance as many students are now attacking Loretta for her religious beliefs. While Mike has shared his opinions, he has affected Ms. Patterson's class by stifling other students' opinions, particularly Loretta's.

(10) In other words, how does this relate to First Amendment protections for free speech?

Keep in mind that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," according to the United States Supreme Court's holding in *Tinker v. Des Moines Independent School District* (1969). Students, however, do not have an unlimited right to self-expression. Students' First Amendment guarantees must be balanced against a school's need to keep order: As long as an act of expression doesn't disrupt the educational process or invade the rights of others, it's acceptable. Therefore, students are free to engage in conduct of an expressive nature so long as that conduct does not harm others or disrupt the educational process. If a student's expressive conduct threatens the health, safety, or welfare of a fellow student, or materially or substantially interferes with another student's access to educational opportunities or programs, the expressive conduct is NOT protected by the First Amendment and may rise to the level of bullying pursuant to [KRS 158.148](#).

(11) What resources does KDE provide with regard to bullying?

The [Kentucky Department of Education](#) provides trainers certified by the Olweus Bullying Prevention Program to support schools and districts as they implement Olweus and other bullying prevention programs. In addition to this, KDE supports the [Kentucky Center for Instructional Discipline](#) (KYCID) at Eastern Kentucky University as well as the [Academic and Behavioral Response to Intervention](#) (ABRI) Program at the University of Louisville. Both centers provide support to local school districts around the implementation of Positive Behavioral Interventions and Supports (PBIS) for all students. The centers coordinate efforts with the Office of Special Education (OSEP) funded national technical assistance center on Positive Behavioral Interventions and Supports. The [Kentucky Center for School Safety](#) also provides support and training for schools in the area of bullying.

ⁱ Olweus, D., Limber, S., Flerx, V., Mullin, N., Riese, J., Snyder, M. (2007). *Olweus Bullying Prevention Program: Schoolwide Guide*, xii.